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WHEN RECORDED MAIL TO:**

City of San Jose  
Department of Planning Building and Code  
Enforcement  
200 East Santa Clara St., Tower 3rd Floor  
San Jose, CA 95113  
Attn: Joseph Horwedel

Space above this line for Recorder's use

**FUNDING AGREEMENT  
BY AND BETWEEN  
THE CITY OF SAN JOSE  
AND  
THE EVERGREEN-EAST HILLS VISION STRATEGY PROPERTY  
OWNERS  
FOR  
CERTAIN IMPROVEMENTS AND AMENITIES  
IN THE EVERGREEN DEVELOPMENT POLICY AREA**

This document is being reviewed by the City to ensure its legal adequacy and consistency with the Council Direction from April 30, 2007. The property owners are continuing to work on other modifications to the document with the intent of meeting the City Council direction previously mentioned.

**December 5, 2006**

**REVISED 5/2/07 berg**

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**THIS FUNDING AGREEMENT** (“Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2007 (“Effective Date”) by and between the **CITY OF SAN JOSE**, a municipal corporation of the State of California (“City”), and all of the following Evergreen-East Hills Vision Strategy area property owners jointly and severally:

**ARCADIA DEVELOPMENT CO.**, a California corporation (“Arcadia”);

**ELI REINHARD**, an individual;

**PEPPER-LANE-QUIMBY LLC**, a California limited liability company (“PLQ”);

**DUINO FAMILY PARTNERS LP**, a California limited partnership (“Duino”);

**MISSION WEST PROPERTIES LP**, a California limited partnership (“Mission West”);

**IONE ENTERPRISES 2 LLC**, a California limited liability company (“Ione”);

**PACIFIC RIM SCIENCE PARK LLC**, a California limited liability company (“Pacific Rim”);

**YERBA BUENA OPCO LLC**, a California limited liability company (“Yerba Buena OPCO”);

**SAN JOSE/EVERGREEN COMMUNITY COLLEGE DISTRICT**, a political subdivision of the State of California (“Evergreen College”); and

**KB – SUMMERHILL EVERGREEN, LLC**, a California limited liability company (“**Pleasant Hills**”) (collectively “Property Owners & Optionees”).

The City and each of the above-listed Property Owners may be referred to in this Agreement individually as “Party,” and collectively as the “Parties.”

**RECITALS**

A. Property Owners own the largest remaining undeveloped parcels in the Evergreen Development Policy Area, which Area is generally located south of Story Road and east of Highway 101 within the City’s Urban Growth Boundary. The Property Owners’ several parcels within the Evergreen Development Policy Area, which sites are generally depicted and described by their common names on Exhibit “A” attached hereto and incorporated herein by reference. The Property Owners of each of the parcels on each larger development site are indicated more specifically on Exhibit “B” attached hereto and incorporated herein by reference.

B. The Evergreen Development Policy was adopted by the City of San Jose in August 1976 as a comprehensive land use plan for the Evergreen Development Policy Area and governs all development within the Evergreen Development Policy Area. The Evergreen Development Policy has been amended from time to time, most recently in 1995.

C. In 2001 and 2002, the City Council adopted the West Evergreen, East Valley/680, and KONA Strong Neighborhoods Initiative (SNI) Improvement Plans. Based on significant community involvement through the West Evergreen, East Valley/680, and KONA Neighborhood Advisory Committees (NACs), the Plans identify “top ten” action items including proposed investments in new facilities.

**D.** On February 2, 2002, Legacy (known as Yerba Buena OPCO for purposes of this Agreement) applied for General Plan text and Land Use/Transportation Diagram amendments to change the land use designation on its site from Campus Industrial to Mixed Use with No Underlying Land Use Designation [Campus Industrial 0-1.7 million square feet, Medium Density Residential (8-16 DU/AC), High Density Residential (25-40 DU/AC), General Commercial (0-100,000 sq. ft.)] on a 119-acre site. These amendment applications were withdrawn in July 2003.

**E.** On June 28, 2002, Evergreen College applied for a General Plan Land Use/Transportation Diagram amendment to change the land use designation on its site from Public/Quasi-Public to Neighborhood Community/Commercial on a 10-acre site. This amendment application was withdrawn in July 2005.

**F.** During the Fall of 2002, meetings occurred between Property Owners, the Mayor's Office, the District 8 Council Office, other property owner representatives, and upper management of the Departments of Public Works, Transportation, and Planning, Building and Code Enforcement to explore the possibility of updating the City's Evergreen Development Policy and consider potential changes to the General Plan within Evergreen in a more comprehensive fashion rather than piecemeal amendments to increase the development potential within the Evergreen Development Policy Area.

**G.** During November 2002, the Evergreen-Eastridge area was the subject of a Charrette organized and implemented by the University of Miami/Knight Program in Community Building. This effort involved the community, including the Property Owners, City staff, local stakeholders, and development experts in a hypothetical design exercise to create a new vision of transit-oriented development and community improvements in and around the Eastridge shopping center at Tully Road and Capital Expressway.

**H.** On February 4, 2003, the City Council approved the Mayor's Budget Strategy Memorandum setting forth specific guidance to control General Fund expenditures. With respect to long range land use planning, the direction was to "defer or suspend advance land use planning efforts without outside funding."

**I.** On February 25, 2003, the City Council approved appropriation actions to accept \$85,000 from Evergreen property owners to conduct the Evergreen Land Use and Transportation Study, consisting of a traffic analysis of 7,900 new housing units and 5,000 jobs in Evergreen. The analysis assumed improvements to Highway 101, 31,000 jobs in Edenvale, and 22,000 jobs in North Coyote Valley, and found that traffic congestion would remain a significant problem during morning and afternoon commute hours in the Evergreen Development Policy Area.

**J.** In August 2003, the District 8 Councilmember convened neighborhood leaders and Charrette participants to explore their interest in participating in a planning process (called the Evergreen Visioning Project) to update the Evergreen Development Policy and develop a comprehensive land use and transportation plan for the Evergreen Development Policy Area. The plan would identify transportation improvements and community amenities as well as the amount of new development that might be authorized in the Evergreen Development Policy Area. Almost all community members in attendance agreed to participate in this effort, resulting in the Evergreen Visioning Project Task Force. The Property Owners also participated in this process.

**K.** In November 2003, and subsequently in March 2004 and June 2006, the City Council approved funding agreements with Yerba Buena OPCO to fund the Evergreen Visioning Project (also known as the Evergreen Smart Growth Strategy and later renamed to the Evergreen-East Hills Vision Strategy).

**L.** In January 2004, the City Council adopted a resolution clarifying and reaffirming the Evergreen Development Policy and directing staff to discourage certain residential development applications until completion of the Evergreen Smart Growth Strategy.

**M.** On May 9, 2005, Property Owners or their representative developers filed individual General Plan Land Use/Transportation Diagram amendments and rezoning applications for each of their respective sites.

**N.** In June 2005, the City Council initiated an update to the Evergreen Development Policy and associated General Plan amendments; appointed a reconfigured Task Force to guide the Evergreen-East Hills Vision Strategy; adopted a work plan; and adopted ten Vision and Outcome statements to guide the completion of the planning effort. The Property Owners have attended and participated in meetings of the Task Force.

**O.** Property Owners have represented to the City that they are, voluntarily and independently of the City, negotiating with the several school districts in the Evergreen Development Policy Area to address school needs that may not be met by the payment of the statutory school impact mitigation fee, which is the sole mitigation measure that can be required by the City of the Property Owners for school impacts pursuant to Government Code section 65995.

**P.** In October 2006, the Evergreen-East Hills Vision Strategy Task Force completed its work, did not reach consensus on a single recommendation, and forwarded several recommendations regarding land use, amenities, schools and other development-related issues to the City Council.

**Q.** In November 2006, the Planning Commission held a public hearing, considered the breadth of the Task Force and staff recommendations, and put forth its own set of recommendations to the City Council.

**R.** The Property Owners' interest in an update of the Evergreen Development Policy and proposed entitlements included a voluntary contribution to pay for base transportation improvements and community amenities. Although the Property Owners did not provide a written proposal, it was generally understood and common knowledge in Task Force meetings that the Property Owners offer was a monetary contribution in excess of \_\_\_\_\_ (\$ \_\_\_\_\_) to fund a package of

transportation improvements and community amenities. It is acknowledged by the Parties that most of the improvements and amenities, with the exception of those specified in Section 2.02.G herein, have no direct nexus to the impacts of the proposed development of the Property Owners' various sites. Rather, the Property Owners have offered and agreed to finance the construction of the improvements and amenities, and to provide related land dedication, for the benefit of the region and the Evergreen Development Policy Area in order to balance the significant environmental and quality of life impacts of the proposed project **["project" not defined; is it the Evergreen Visioning Project"?)** which cannot be mitigated to a level of insignificance. The proposed improvements and amenities have been refined and prioritized by the City Council appointed Evergreen East Hills Vision Strategy Task Force, which included participation by the Property Owners and community representatives from the Evergreen Development Policy Area. The resulting desired improvements are specified in Section 2 of this Agreement and the amenities are specified in Section 3 and Exhibit "C," attached hereto and incorporated herein by reference (hereinafter, collectively the "Improvements and Amenities," or individually and respectively as the "Improvements" or the "Amenities" as indicated respectively in Section 2 herein or on Exhibit "C").

**S.** The Improvements and Amenities include: (i) Improvements to US Route 101 between the US Route 101/I-280/I-680 Interchange and the US Route 101/Yerba Buena Road Interchange as required improvements; (ii) various Evergreen Development Policy Area traffic improvements as required improvements; and (iii) other amenities to be selected by the City based upon the priorities set the City Council for construction by the City with a funding contribution by the Property Owners over the course of the project **[see above re need to define "project" throughout Agreement]** in periodic payments as specified in this Agreement.



**T.** City, in reliance upon Property Owners' proposed project including the Improvements and Amenities, has conducted environmental review of the project pursuant to the California Environmental Quality Act in the form of a Draft Environmental Impact Report ("DEIR"), including such Improvements and Amenities in the Project Description and evaluation, for which a resolution adopting a Statement of Overriding Considerations and certifying the DEIR as the final Environmental Impact Report were adopted by the City Council on \_\_\_\_\_ 2007.

**U.** The Parties hereby enter into this Agreement to further enable comprehensive planning for development in the Evergreen-East Hills Vision Strategy Planning Area, allocate responsibilities and give adequate assurances of performance among the various Parties involved in the development, and provide extensive private financing for the timely construction of the Improvements and Amenities, including but not limited to regional public infrastructure, by the Property Owners and their successors in interest.

**V.** However, the Property Owners hereby acknowledge and expressly agree that City shall exercise its discretionary authority and is under no obligation to approve any development-related application(s) by the Property Owners jointly or individually as a result of this Agreement and the performance of this Agreement.

**NOW, THEREFORE,** in consideration of the foregoing recitals and the promises contained herein, and subject to the terms, provisions, and conditions of the Recitals and as hereinafter set forth in this Agreement, the Parties agree as follows:

## **ARTICLE 1 PURPOSE AND INTENT**

### **1.01 Purpose**

The purpose of the Agreement is to establish the Property Owners' obligation to fund and the phase the construction of the Improvements and the Amenities, summarize the responsibilities of each Property Owner and project schedules as expressed in the following documents: (a) the Evergreen Development Policy as amended for this project; (b) the Cooperation Agreement(s) Between Yerba Buena OPCO, the Valley Transportation Authority (VTA) and the City of San Jose with regard to improvements to US Route 101 between the US Route 101/I-280/I-680 Interchange and the US Route 101/Yerba Buena Road Interchange (or, alternatively, by separate agreement between the City of San Jose and VTA with funding from the Property Owners directly to the City); and (c) the DEIR. This Agreement sets forth the phasing and funding responsibilities of each Property Owner for the Improvements and Amenities identified in this Agreement, which are set forth more fully in Exhibit "D" attached hereto, and are referred to herein as the "Phasing Plan".

Local infrastructure improvements are also required to be constructed as development occurs on each Property Owner's parcel or parcels. These improvements include, among other requirements, local circulation improvements to address local circulation needs in conjunction with the City's standard development review and entitlement process. Local infrastructure improvements shall be implemented through further required land use approvals, and by approved improvement plans secured by development specific improvement agreements with each Property Owner where required by law, and are intentionally excluded from this agreement.

## **1.02 Intent**

It is the intent of this Agreement that each Property Owner shall contribute funding to the City per the Phasing Plan, and City shall rely upon said contributions, a total contribution amount of \_\_\_\_\_ (\$\_\_\_\_\_). Any amounts due from any Owner after the Phase I contributions shall be increased annually by the construction cost index as provided in Section 3.01 herein, in order to fund the design and construction of the Improvements and Amenities. The Property Owners' contribution to the City shall be made no later than in the phases indicated in the Evergreen Development Policy as amended (and Exhibit "F" hereto) associated with development entitlements. The Property Owners agree that the City shall use the Property Owner contribution to fund the Improvements, with all funds in excess of those utilized for design and construction of the Improvements to be used and allocated at the discretion of the City towards the design and construction of the Amenities or for any other purpose authorized by this Agreement, including project management.

## **ARTICLE 2 RESPONSIBILITY FOR COST OF IMPROVEMENTS**

### **2.01 Improvements Required**

Property Owners shall timely and fully fund the \$\_\_\_\_\_ -maximum contribution amount per the Phasing Plan based upon the allocations from each Property Owner as set forth herein, which shall be for Improvements in the Improvements and Amenities listed in Subsections A through G in Section 2.02 below, including but not limited to design, further environmental compliance if required, related property dedication or acquisition as required, and construction to completion and acceptance by the City review. In the event that the actual cost of the Improvements and Amenities exceeds the preliminary cost estimates made at the time of this Agreement, the Property Owners' maximum \$\_\_\_\_\_ contribution shall include the escalations as set forth herein and such cost may reduce the contributions for the Amenities on the Amenities list as specified in Article 3 and Exhibit "D" of this Agreement in recognition that the Property Owners' total contribution is \_\_\_\_\_ (\$\_\_\_\_\_).

### **2.02 Transportation Improvements**

1. US Route 101 Corridor from US Route 101/I-280/I-680 Interchange to the US Route 101/Yerba Buena Road Interchange.

Property Owners shall fund design and construction up to a maximum of \$ \_\_\_\_\_ for the following improvements to the US Route 101 Corridor in Santa Clara County from the US Route 101/I-280/I-680 Interchange to the US Route 101/Yerba Buena Road Interchange as identified in the 101 Corridor Study (101 Central) dated February 2004. This study indicates that the 101 Improvements are a necessary measure to improve traffic on the State highway system to meet current needs and anticipated future growth of the San Jose community including the Evergreen-East Hills Vision Strategy Area. The 101 Improvements include, but may not be limited to the following:

- (1) Construction of an additional lane in the southbound direction from south of Story Road to Yerba Buena Road;
- (2) Reconfiguration of the US 101/Tully Road Interchange;
- (3) Reconfiguration of the US 101/Capitol Expressway Interchange;
- (4) Construction of an auxiliary lane in the southbound direction between the Tully Road and Capitol Expressway Interchange;
- (5) Modification of the northbound on-ramp at the US 101/Yerba Buena Road Interchange;
- (6) Replacement of the Tully Road over-crossing over US 101;
- (7) Replacement of two existing sound walls along west side of US 101 near US 101/Tully Road Interchange; and
- (8) All clearances, permits, fees, and land acquisitions associated with the improvements listed herein (collectively referred to as the "101 Improvement Project").

The necessary actions to complete the 101 Improvement Project are detailed in Exhibit "C," which is attached hereto and incorporated herein by reference.

The Valley Transportation Agency (“VTA”) shall be the 101 Improvement Project manager-implementing agency from design through completion of construction. When fully funded by the Property Owners, it is contemplated that VTA shall complete the 101 Improvement Project on behalf of the State of California Department of Transportation (“State”). This requires the Property Owners to enter into a Cooperative Agreement or Agreements with VTA and the City for the complete funding through completion of the environmental phase, design and construction of the 101 Improvement Project (or, alternatively, by separate agreement between the City of San Jose and VTA with funding from the Property Owners directly to the City). In accordance with the phasing schedule contained in the Evergreen Development Policy, as amended (Exhibit “E” hereto), the City shall not process any EEHVS development-related applications for rezoning, subdivision maps or any other land use entitlements until approval and execution of such Cooperative Agreement(s) by each of the Property Owners or their designated representative, VTA and the City or upon payment in full by the Property Owners of a maximum of \$\_\_\_\_\_ for the cost of construction to the City in the amount contracted for the 101 Improvement Project between the City and VTA.

The funding and timing of the 101 Improvements shall be in accordance with the Cooperative Agreement(s) between the Property Owners, VTA and the City (or, alternatively, by separate agreement between the City of San Jose and VTA with funding from the Property Owners directly to the City). Property Owners acknowledge and agree that any breach of this agreement and such Cooperative Agreement(s) between VTA, the City, and the Property Owners, or any breach in an Agreement between VTA and the City caused by an individual Property Owner’s breach of its obligations under this Agreement, may result in the City’s denial, modification or rescission of any Evergreen Development Policy related approval directly related to the breaching Property Owner’s property, including but not limited to any legislative, quasi-legislative or administrative approvals by the City, among all other remedies available to the City.

**B. White Road**

White Road shall be widened and restriped to its full planned six-lane configuration from south of Ocala Avenue to Quimby Road, and from Stevens Lane to Aborn Road. The improvements include but are not limited to sidewalk, bike lanes, pavement, and a landscaped median constructed to City standards. Additional through and/or turn lanes will be added to the intersections with Ocala Avenue, Tully Road, Norwood Avenue, Quimby Road, Stevens Lane and Aborn Road. The improvement by the Property Owners and the required timing thereof is specified in Exhibit “    ” hereto.

**C. Reconfiguration of Ocala Avenue between Capitol Expressway and White Road**

Ocala Avenue shall be widened to four lanes, two in each direction, between Capitol Expressway on the west and White Road on the east, a distance of approximately 0.7 miles. The work shall occur within the existing right-of-way and the widening shall consist of restriping a short segment of pavement west of White Road. This improvement by the Property Owners and the required timing thereof is specified in Exhibit “    ” hereto.

**D. Capitol Expressway between Quimby Road and US Route 101**

The existing High Occupancy Vehicle (“HOV”) lanes between US Route 101 and Nieman Boulevard shall be converted to the customary “mixed flow” lanes, meaning that their use during weekday peak commute periods will no longer be restricted to vehicles with two or more occupants. Other required improvements to Capitol Expressway between U.S. 101 and Quimby Road consist of the addition of sidewalks, landscaping of the median, the addition of street lights, the planting of trees, pavement work, and traffic signal upgrade/modification. All work will occur within the existing right-of-way. The timing of these improvements will coincide with the LRT project and/or the relinquishment of Capitol Expressway from County jurisdiction to City jurisdiction as indicated in Exhibit “    ” hereto. The Property Owners shall fund these improvements.

**E. Various Intersection Improvements**

Additional through and/or turn lanes and operational improvements are necessary at the following 14 intersections in order to provide additional capacity and reduce delay:

- (1) White Road - Ocala Avenue - Marten Avenue;
- (2) White Road - Tully Road;
- (3) White Road - Norwood Avenue;
- (4) White Road - Quimby Road;
- (5) White Road - Stevens Lane;
- (6) White Road - Aborn Road - San Felipe Road;
- (7) Yerba Buena Road - San Felipe Road;
- (8) Yerba Buena Road - Silver Creek Road;
- (9) King Road - Tully Road;
- (10) Aborn Road - Ruby Avenue;
- (11) Capitol Expressway - Quimby Road;
- (12) Capitol Expressway - Aborn Road;
- (13) Capitol Expressway - Silver Creek Road; and
- (14) Capitol Expressway - McLaughlin Avenue.

All of these improvements shall be funded and constructed by the Property Owners as specified in Exhibit "A" hereto.

**F. New Traffic Signals**

(1) Land Owners shall install traffic signals at the following locations; however, the following list of intersections is preliminary and may be modified by the City based upon actual traffic patterns:

- (a) Ruby Avenue - Norwood Avenue;
- (b) I-680 Ramps (northbound) - Jackson Avenue;
- (c) Ruby Avenue - Tully Road;
- (d) Story Road - Clayton Road;
- (e) Marten Avenue - Flint Avenue - Mt. Rushmore Drive;
- (f) Quimby Road - Scottsdale Drive;
- (g) Nieman Boulevard - Daniel Maloney Drive;
- (h) Story Road - Lancelot Lane;

- (i) Ocala Avenue - Hillmont Avenue; and
- (j) Ocala Avenue - Adrian Way.

All of these traffic signal installations shall be completed by the Property Owners in the manner and in the timing specified in Exhibit “ ” hereto.

**G. Traffic Mitigation Measures**

As part of the maximum obligation for Improvements and Amenities cost listed in this Article 2, the Property Owners shall fund the following specific mitigation measures at the following intersections for this project for the development scenario adopted by the City Council upon approval of the Evergreen Development Policy:

- (1) Intersection of Capitol Expressway and Quimby Road (for DEIR Scenarios II-VI): Addition of a northbound right-turn lane and an eastbound right-turn lane;
- (2) Tully Road and McLaughlin Avenue (for DEIR Scenarios II-VI): Addition of an exclusive northbound right-turn lane; and
- (3) Neiman Boulevard and Yerba Buena Road (for DEIR Scenario VI, partial mitigation: Addition of a second westbound left-turn lane (collectively referred to as the Traffic Mitigation Measures).

The funding, timing and completion of these Traffic Mitigation Measures shall be in accordance with the DEIR and Ex. “C.” Property Owners acknowledge and agree that any breach of this agreement may result in the City’s denial, modification or rescission of any Evergreen Development Policy related approval directly related to the breaching Property Owner’s property, including but not limited to any legislative, quasi-legislative or administrative approvals by the City, among all other remedies available to the City.

**H. Transportation Amenities**



Selected improvements in this category may include a proposed Intelligent Transportation System (ITS Network, construction of sections of Thompson Creek Trail, new bike lanes, transit system enhancements and traffic calming measures. The improvements in this category are listed with the Amenities in Section 3 herein and in Exhibit “D” hereto, and will be funded by the Property Owners in the manner provided herein for Amenities and according to the Phasing Plan.

Notwithstanding any other provisions of this Agreement, each Property Owner shall have a maximum obligation for funding only its allocated share of the total funding amount and such payments shall be per the terms of the Phasing Plan attached as Exhibit “E”..

### **2.03 Governmental Funding of Improvements**

In the event that the City obtains funds for any of the Improvements from any federal, state or regional grant or other similar government funding source, such funding shall not relieve the Property Owners of the obligation to pay the City the maximum amount stated in this Agreement which may then be used by the City towards the cost of the construction of the Amenities, to defray the City’s operations and maintenance costs of the Improvements and Amenities, and/or to provide affordable housing in the Evergreen Development Policy Area.

## **ARTICLE 3 RESPONSIBILITY FOR COST OF AMENITIES**

### **3.01 Phased Payments and Increases**

The list of Amenities attached hereto and incorporated by reference as Exhibit "D" shall be funded by the remaining balance of the \$ \_\_\_\_\_ maximum contribution in phased payments as indicated on Exhibit "E", which is consistent with the phasing schedule contained in the Evergreen Development Policy as amended. For any Property Owner that has payment obligations beyond Phase I, its phased payments shall be increased in amount annually on January 1 of each year starting January 1, 2008 by the increase in the construction cost index as most recently reported in the Engineering News Record construction index.

**A. Amenities Priorities and Tiers**

The Parties acknowledge and agree that not all of the Amenities listed in Exhibit "D" are intended to be constructed, but that the City shall in its sole discretion select which of the Amenities shall be constructed at the time that sufficient funds are available for construction.

While very general cost estimates have been prepared for most of the Amenities, projected construction costs will be refined once design work is completed and shall ultimately be determined at time of construction. Some Amenities are located on specific Opportunity Sites, so their full implementation may be difficult or impractical ahead of the development of the site. **[duplicative of 4.05]** Accordingly, specific land dedication minimum thresholds are included in this Agreement as specified below.

The Amenities listed in Exhibit “D” have been placed into three groups, which are identified as Tier 1 through Tier 3 on Exhibit “D” hereto. Tier 1 amenities are considered the most important to the community and their funding and construction will be given the highest priority. Tier 2 and Tier 3 follow in sequential order of importance. Full funding of Tier 1 amenities is a priority, per the Phasing Plan, for development of the later phases. While the amenities within each Tier are also ranked, the order of their implementation may vary from that ranking based upon the availability of funding and other factors. Moreover, dependent on the amount of available funding, an amenity in any tier may be reprioritized and constructed in advance of other amenities in order to utilize all available funding. Descriptions of these Amenities are included as Exhibit “D” hereto.

**B. Tier 1 Amenities Where Joint Use Agreements Are Proposed**

In the event that a joint use agreement between the City and a school district serving the Evergreen Development Policy Area is proposed by the Property Owners and the affected school district for any Tier 1 Amenity as indicated on Exhibit “D,” the City shall consider a proposed agreement in good faith and may, in its sole discretion, determine whether to enter into such a joint use agreement. In the event that the City, the affected school district, and the Property Owners enter into a joint use agreement for any Tier 1 Amenity, the Property Owners may make a direct contribution to the school district in the amount required by the joint use agreement and such payment shall be credited by the City to the Property Owners against the Property Owners next phased payment pursuant to Exhibit “E”. Notwithstanding the foregoing, the provision of the Tier 1 Amenity described in Exhibit “D” as “2. Community/Youth Center on Arcadia Site (30,000-40,000 sq. ft.),” shall be in accordance with the timing requirements in Section 4.03 regardless of whether the Amenity is constructed pursuant to a joint use agreement.

**3.02 Relationship to Parkland Dedication Ordinance/Parkland Impact Ordinance**

Parkland associated with the development of the Property Owners' development sites shall comply with minimum City Parkland Dedication Ordinance ("PDO") and Parkland Impact Ordinance ("PIO") obligations expressed in those ordinances and the Evergreen Development Policy as amended. The funding and completion of parks and recreation facilities listed as Improvements and Amenities in this Agreement, as well as the required dedication or acquisition and dedication of unimproved land therefor, shall fully comply with the requirements of the Evergreen Development Policy as amended, in addition to the required compliance with the City's PDO and PIO by each of the Property Owners.

### **3.03 Turn-Key Agreements**

A Property Owner may propose to the City to construct any Amenity, so long as the construction by the Property Owner as the "City-private developer contract" exception to the public bidding requirement in Title 14 of the San Jose Municipal Code and all of the conditions of approval of such a contract are made by the City. The Property Owner's proposal shall include, among other items that may be requested by the City, an engineer's estimate of the cost of construction of the amenity. In the event that the City authorizes construction of the Amenity pursuant to this section and the requirements of the Municipal Code, the Property Owner shall in no event be compensated more than ten percent 10% above the City approved engineer's estimate for the work, including all change orders. Upon completion of the construction of the Amenity, the amount of funding to be contributed to the City by the Property Owners shall be reduced by the amount authorized for the work in the City-private developer contract for the construction of the Amenity.

### **3.04 Governmental Funding of Amenities**

In the event that the City obtains funds for any of the Amenities from any federal, state or regional grant or other similar government funding source, or private donation, such funding shall not relieve the Property Owners of the obligation to pay the City the maximum amount required pursuant to this Agreement which may then be used by the City towards the cost of the construction of the Amenities, to defray the City's operations and maintenance costs of the Improvements and Amenities, and/or to provide affordable housing in the Evergreen Development Policy area.

#### **ARTICLE 4 LAND DEDICATION**

##### **4.01 Fire Station Site**

At the time of development of the parcel commonly referred to as the Pleasant Hills Golf Course site, Assessor Parcel Nos. 649-23-001 and 649-24-013, but no later than concurrently with approval by the City and recordation of the Final Map for the development, the Property Owner shall dedicate to the City for the relocation by the City of Fire Station 21 a net one (1) acre site fronting White Road and another existing public street or street that shall be dedicated upon improvement by the Property Owner to the City for public use. Such site shall have all public utilities, including but not limited to gas, electricity, water, sewer, and stormwater facilities, located within the public right-of-way immediately adjacent to the site for the purpose of serving the fire station. The Property Owner shall timely submit the proposed location of the one-acre parcel to the City for prior City approval of the proposed location and suitability of the parcel for fire station purposes, which shall not be unreasonably withheld by the City.

##### **4.02 Library Site**

At the time of issuance of the first development permit (Planned Development Permit, Tentative Map, or other equivalent development permit) for private development purposes of the parcel commonly referred to as the Evergreen Community College Site,

Assessor Parcel Nos. 660-21-022 and 660-21-023, in accordance with the Evergreen Development Policy as amended, the Library Master Plan, and the Library Bond Measure O (approved by the voters on November 7, 2000), the Property Owner shall dedicate to the City for library purposes a net two (2) acre site with frontage upon either San Felipe Road or Yerba Buena Road. Such site shall have all public utilities, including but not limited to gas, electricity, water, sewer, and stormwater facilities, located within the public right-of-way immediately adjacent to the site for the purpose of serving the library. The Property Owner shall timely submit the proposed location of the two-acre parcel to the City for prior City approval of the proposed location and suitability of the parcel for library purposes, which shall not be unreasonably withheld by the City.

#### **4.03 Community/Youth Center and Gym on Arcadia Site**

Consistent with Section 3.01 and no later than the date of the first development permit (Planned Development Permit, Tentative Map or other equivalent permit for development purposes) for development of the parcel commonly referred to as the Arcadia Site, which includes Assessor Parcel Nos. 670-20-071, 670-24-013, 670-24-045, 670-25-027, 670-29-002, 670-29-017, and 670-29-020, in accordance with the Evergreen Development Policy as amended, regardless of whether development of the parcel occurs as contemplated in the amended Evergreen Development Policy, the Property Owner shall dedicate to the City for community/youth center purposes a site sufficient in size to accommodate a 30,000 to 40,000 sq. ft. community center with adequate open space, parking and ingress and egress to an adequate public street.. Such site shall have all public utilities, including but not limited to gas, electricity, water, sewer, and stormwater facilities, located within the public right-of-way immediately adjacent to the site for the purpose of serving the community center. The Property Owner shall timely submit the proposed location of the parcel to the City for prior City approval of the proposed location and suitability of the parcel for community/youth center purposes, which shall not be unreasonably withheld by the City.

#### **4.04 Dedication of Land for Amenities Where Joint Use Agreements Are Proposed**

For any Amenity that is proposed to be located in part upon property owned by any of the school districts serving the Evergreen Development Policy Area, the affected Property Owner shall dedicate its portion of the site to the City no later than the date of the first development permit (Planned Development Permit, Tentative Map, or other equivalent development permit) for that Opportunity Site unless, prior to any rezoning of any of the Property Owners' sites, the City voluntarily enters into a joint use agreement for the Amenity and the property on which the Amenity is located with the affected school district. The City shall consider a proposed joint use agreement in good faith and may, in its sole discretion, determine whether to enter into such a joint use agreement.

#### **4.05 Amenities on Opportunity Sites**

When an Amenity is located on an Opportunity Site, any required land dedication shall occur at the time of the specific entitlement process for that Opportunity Site or as may otherwise be required by Article 4 herein.

### **ARTICLE 5 TERM OF AGREEMENT**

#### **5.01 Expiration**

The term of this Agreement shall commence upon the Effective Date and shall continue until the completion of all payments, land dedication, and Improvements and Amenities required by this Agreement, and the completion of all development upon the Property Owners' sites identified in Exhibit "A" and Exhibit "B" in accordance with all applicable development approvals by the City. Following the expiration of the term of this Agreement, this Agreement shall be deemed of no further force and effect, except as to those provisions expressly designated herein to survive expiration or termination.

#### **5.02 Agreement Void if No Council Approval of Development Policy**

This Agreement shall be void and shall have no force and effect in the event that the City Council does not approve of the proposed updates to the Evergreen Development Policy affecting the development of the Property Owners' parcels that will be considered by the Council for adoption in May, 2007. The updates to Evergreen Development Policy shall include as a minimum the Property Owners' development rights as set forth in Exhibit "E" This section does not apply to any other future amendments modifying the Evergreen Development Policy in whole or in part, so long as said amendments are consistent with the terms of this Agreement.

### **5.03 Agreement Voidable by Property Owners**

Notwithstanding the terms in Section 5.01, because this Agreement does not and cannot bind the City Council in its legislative discretion to consider the adoption of the Property Owners' proposed amendment to the Evergreen Development Policy, a majority of the following four primary Property Owners: Yerba Buena OPCO, **DUINO FAMILY PARTNERS LP** /KB-Summerhill,, Mission West, and Arcadia, may void this Agreement in the event that the City Council approves or directs staff to return for consideration of an Evergreen Development Policy amendment providing for less than a total of Four Thousand Seven Hundred Thirty (4,730) residential units allocated to each of the Property Owner as shown on Exhibit B attached hereto. No individual Property Owner may void this Agreement pursuant to this section. If the Property Owners desire to void this Agreement, the Property Owners shall duly execute a notice of termination pursuant to this section and deliver it to the City in the manner provided herein no later than thirty (30) calendar days following the Council's final adoption of the amendment to the Evergreen Development Policy, if adopted.

## **ARTICLE 6 MISCELLANEOUS PROVISIONS**

### **6.01 City Project Manager Funding**

The City anticipates that the Administration of this Agreement and the other agreements contemplated herein, the corresponding Evergreen Development Policy, and all related land use entitlements, shall require staff work not covered under current



City development related fees, nor are they considered in the cost of providing the Improvements and Amenities hereunder. In order to compensate the City for such costs, at any time during the term of this Agreement, and so long as there are funds remaining unencumbered, the City Council may determine to use a portion of the funds provided by the Property Owners pursuant to this Agreement in an amount not to exceed One Hundred Twenty Thousand Dollars (\$120,000.00) per fiscal year.

#### **6.02 Successors of Property Owners**

\_\_\_\_\_ This Agreement is binding on the successors and assigns of each of the Property Owners. Each Property Owner shall notify the City in writing within 15 calendar days of the transfer of its Opportunity Site or any portion thereof of the name of the transferee, form of entity of the transferee, and the name and address of the transferee's agent for purposes of notice under this Agreement.

#### **6.03 Effect of Reduction in Number of Residential Units by Property Owners**

In the event that any action by the Property Owners (collectively or individually) results in a reduction in the total number of building permits issued for residential units on the Opportunity Site parcels identified in Exhibit "B" hereto from the maximum total number of residential units on the Opportunity Sites specified in the Evergreen Development Policy, the Property Owners shall continue to contribute payments in the following manner:

(1) If residential development proceeds in the unit numbers for each Opportunity Site as specified in Exhibit "B" hereto, the Property Owners shall make phased payments in accordance with Exhibit "E" **[or Exhibit F?]** hereto until such time as the build-out of all of the parcels that are subject to the terms of this Agreement; or

(2) In the event that amount residential development is reduced by the Property Owners (individually or collectively) below the unit numbers for each Opportunity Site as specified in Exhibit "B" hereto, upon submission of building permits that will effect the completion of all of residential construction upon any Opportunity Site, regardless of the maximum number of residential units indicated for that Opportunity Site on Exhibit "B" hereto, the Property Owners shall pay to the City the full payment for the maximum number of building permits specified in Exhibit "B" at the time of application for such building permits. The purpose of this provision is to ensure that the City will receive the full benefit of the \_\_\_\_\_ (\$\_\_\_\_\_ ) contribution by the Property Owners regardless of changes by the Property Owners to their development proposals. No Property Owner shall have any obligation beyond the obligations set forth in Exhibit E attached hereto.

#### **6.04 Remedies**

- A.** Each Party shall notify the other of any item considered by such Party to be a material breach of this Agreement to allow the allegedly breaching Party an opportunity to cure.
  
- B.** If such material breach is not corrected or corrective action commenced within fifteen (15) business days for a monetary breach and thirty (30) business days for a non-monetary breach after receipt of a notice to cure sent by the non-breaching Party, or within an extended period if authorized in writing by the Party giving notice of the breach, and diligently pursued to completion, the non-breaching Party may, at its option cure any breach and seek appropriate remedies in a court of law. In addition to any other rights or remedies, a Party may institute proceedings for mandamus, specific performance or other injunctive or declaratory relief to enforce this Agreement. This Agreement does not preclude any Party from seeking any legal or equitable remedies that accrued on or before the Effective Date.

#### **6.05 Hold Harmless Agreement**

A. Each Property Owner agrees to and shall hold City, its elective and appointive boards, commissions, officers, agents and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from the Property Owners, or and of their contractors', subcontractors', agents' or employees' operations under this Agreement, whether such operations be by Property Owners or by any of Property Owners' contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Property Owners or any of Property Owner's contractors or subcontractors; but only where operation(s) giving rise to the damage or claims for damage (i) occur on property then owned by Property Owners or (ii) directly relate to a Property Owners obligation under this Agreement. This Section 6.05.A shall not apply to suits and actions brought by Property Owners or any of them for default of this Agreement or to suits and actions brought by any person or entity arising from the sole active negligence or willful misconduct of City or its elected and appointed representatives, officers, agents and employees.

B. Property Owners and each of them shall require in any agreement to assign or transfer all or any portion of their rights, duties, obligations or interests in this Agreement that any such assignee or transferee ("Transferees", each a "Transferee"), agree to hold City, its elective and appointive boards, commissions, officers, agents and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from a Transferee's or its contractors', subcontractors', agents' or employees' operations under this Agreement, whether such operations be by the Transferee or by any of its contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for the Transferee or any of the Transferee's contractors or subcontractors; but only where operation(s) giving rise to the damage or claims for damage (i) occur on property then owned by the Transferee or (ii) directly relate to an obligation of this Agreement assumed by the Transferee. This Section 5.02.B shall not apply to suits and actions brought by a Transferee for default of this Agreement or to suits and actions brought by any person or entity arising from the sole active negligence or willful misconduct of City or its elected and appointed representatives, officers, agents and employees.

C. In the event of any legal action instituted by a third party challenging any provision of the Evergreen Development Policy amendment, this Agreement, the procedures leading to its adoption, including but not limited to compliance with the California Environmental Quality Act, or its implementation, including without limitation, the approval of any legislative or quasi-judicial actions or the issuance of any discretionary development-related approvals pursuant to the Evergreen Development Policy as amended, the Property Owners, and each of them, and the City, each shall have the right, in each Party's sole discretion, to elect whether or not to defend such action. If defense is made, Property Owners and City each shall have the right to select its own counsel and to control its participation and conduct in the litigation in all respects permitted by law. If defense is made, Property Owners and City agree to affirmatively cooperate in defending said action and to execute a joint defense and confidentiality agreement, only so long as such joint defense and confidentiality agreement is in a form reasonably satisfactory to each respective party to that agreement, in order to share and protect information under the joint defense privilege recognized under applicable law. As part of the cooperation in defending an action, City and Property Owners shall coordinate their defense in order to make the most efficient use of legal counsel and to share and protect information. Property Owners may terminate its defense at any time, in which case City also may terminate its defense.

D. The City agrees to give prompt notice to Property Owners with respect to any suit or claim initiated or threatened against the City, and in no event, later than the earlier of (a) ten (10) days after valid service of process as to any filed suit, or (b) fifteen (15) days after receiving notification of the filing of such suit or the assertion of such claim, which the City has reason to believe is likely to give rise to a claim for indemnity hereunder. If prompt notice is not given to Property Owners, then Property Owners' liability hereunder shall terminate to the extent and only to the extent that Property Owners are prejudiced by such failure as to the matter for which such notice is not timely given. It is understood and agreed that no commissioners, members, officers, agents, or employees of the City (or of its successors or assigns) shall be personally liable to Property Owners nor shall any officers, directors, shareholders, agents or employees of Property Owners (or of its successors or assigns) be personally liable to City in the event of any default or breach of this Agreement.

#### **6.06 Notices**

All notices to be given hereunder shall be in writing and shall be served, either personally or by mail, postage prepaid, to the Parties at the addresses set forth below, or to any other address provided by one (1) party to the others in writing.

**CITY:**

Director  
Department of Planning,  
Building & Code Enforcement  
200 E. Santa Clara St.  
San Jose, CA 95113  
Attn: Joseph Horwedel

*With a copy to:*

City Attorney  
Office of the City Attorney  
200 E. Santa Clara St.  
San Jose, CA 95113

**PROPERTY OWNERS: On behalf of all of the Property Owners,**

\_\_\_\_\_ **is hereby designated by the Property Owners to provide copies of all notices hereunder to all of the Property Owners**

**[UPDATE LIST - Owners need to complete below]**

**[Property Owners also need to specify above who among them will be responsible to disseminate notices from the City arising from this agreement]**

**ARCADIA DEVELOPMENT CO.**, a California corporation

**ELI REINHARD**, an individual

**PEPPER-LANE-QUIMBY LLC**, a California limited liability company

**DUINO FAMILY PARTNERS LP**, a California limited partnership

**MISSION WEST PROPERTIES LP**, a California limited partnership  
10050 Bandley Drive, Cupertino, California 95014

**IONE ENTERPRISES 2 LLC**, a California limited liability company  
10050 Bandley Drive, Cupertino, California 95014

**PACIFIC RIM SCIENCE PARK LLC**, a California limited liability company

**YERBA BUENA OPCO LLC**, a California limited liability company

**SAN JOSE/EVERGREEN COMMUNITY COLLEGE DISTRICT**, a political subdivision  
of the State of California

**KB – SUMMERHILL EVERGREEN, LLC**, a California limited liability company

**6.07 California Law to Govern**

It is understood and agreed by and between the Parties hereto that this Agreement shall be deemed and construed to be entered into and to be performed in the County of Santa Clara, State of California, and it is further understood and agreed by and between the Parties that the law of the State of California shall govern the rights, obligations, duties, and liabilities of the Parties and also govern the interpretation of this Agreement.

**6.08 Not a Development Agreement**

The Parties agree that this Agreement shall not be considered or construed in any manner as a development agreement under Sections 65864 through 65869.5 of the Government Code and City Ordinance No. 24297.

**6.09 Compliance with City Laws; Payment of Taxes and Fees**

Each Property Owner shall comply with all City ordinances, resolutions, rules and regulations applicable to the development of each of their respective sites, including but not limited to obtaining required permits and approvals and payment of associated fees and costs. Each Property Owner shall also pay all taxes, fees, charges and other costs of development that are in effect at the time of application for each building permit.

**6.10 Venue**

In the even that suit shall be brought by any Party, the Parties agree that trial of such action shall be held in a State Court of the County of Santa Clara or in a U.S. District Court for the Northern District of California.

**6.11 Prohibition Against Acceptance of Gifts**

A. Property Owners are familiar with City's prohibition against the acceptance of any gift by a City officer or designated employee, which prohibition is found in the San Jose Municipal Code.



B. Property Owners agree not to offer any City officer or designated employee any gift prohibited by the Municipal Code.

C. A Property Owner's offer or giving of any gift prohibited by the Municipal Code shall constitute a material breach of this Agreement by the Property Owner. In addition to any other remedies City may have in law or equity, City in its sole discretion may revise or rescind any of its land use approvals and/or terminate this Agreement.

D. Property Owners, and each of them, agree to include the above provisions in all of their contracts with consultants, subconsultants, subcontractors, and agents. Upon notification from City that a violation of the Gift Ordinance as defined in the Municipal Code has occurred, Property Owners agree to take reasonable steps, within Property Owner's control, to have the violation remedied.

#### **6.12 Entire Agreement**

This agreement, together with the other Project Approvals and the agreements referenced herein, contain the entire understanding between the Parties with respect to the subject matters herein. There are no representations, agreements, or understandings (whether oral or written) between or among the Parties relating to the subject matter of this Agreement which are not fully expressed or referenced herein. This Agreement may not be amended except by written instrument signed by all the Parties.

#### **6.13 Time**

Time is of the essence for the performance of each and every term, covenant, and condition contained in this Agreement.

#### **6.14 Effective Date**

No part of this Agreement shall become effective as to any Party until the Effective Date.

**6.15 No Third Party Beneficiary**

The Parties hereto mutually agree that this Agreement is for their sole benefit and is not intended by them to be, in part or in whole, for the benefit on any third party. There is no third party beneficiary to this Agreement.

**6.16 Counterparts**

This Agreement may be executed in counterparts.

**6.17 Development As a Private Undertaking**

No partnership, joint venture or other association of any kind between any of the Property Owners and City is formed by this Agreement.

**6.18 Further Assurances**

Each Party shall promptly perform, execute and deliver or cause to be performed, executed and/or delivered any and all acts, deeds, and assurances, including the delivery of any documents, as either Party may reasonably required to effectuate the intent and purpose of this Agreement.

**6.19 Nonwaiver**

Unless otherwise expressly provided in this Agreement, no waiver by a Party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such Party. No delay or omission in the exercise of any right or remedy accruing to any Party upon any breach under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by a Party of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other term, covenant or condition.

**6.20 Construction**

The Parties acknowledge that each Party and its counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendment or exhibits hereto.

**6.21 Conflict Between Evergreen Development Policy and Agreement**

In the event of a conflict in the provisions of the Evergreen Development Policy and any related land use determinations and the provisions of this Agreement, the Evergreen Development Policy and related land use determinations shall govern all land use related matters while the provisions of the Agreement shall govern all matters relating to the funding obligation hereunder.

**6.22 Force Majeure**

In addition to specific provision of this Agreement, the time within which a Party is required to perform any act under this Agreement shall be extended by a period of time equal to the amount of time during which performance of act is delayed for reasons beyond the reasonable control of such party due to war; insurrection or acts of civil disobedience; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions; the pendency of any mediation, arbitration, litigation or other administrative or judicial proceeding affecting the construction and completion of the Improvements and Amenities, or a Party's ability to perform its obligations under this Agreement; unusually severe weather; inability to secure necessary labor, materials, or tools; delay of any contractor, subcontractor, or supplier; acts of another party; acts or the failure to act by Parties shall not excuse performance by Parties; or any other causes beyond the reasonable control or without the fault of the Party claiming an extension of time to perform which substantially interferes with such Party's performance under this Agreement (collectively, "Force Majeure Events"). An extension of time for any cause shall only be for the period of the Force Majeure Event, which period shall commence to run from the time of commencement of the Force Majeure Event. A Party claiming an extension due to a Force Majeure Event shall notify all other Parties in writing within thirty (30) days after commencement of the Force Majeure Event. If, however, notice by the Party claiming extension is sent to the other Party more than thirty (30) days after the commencement of the Force Majeure Event, then unless otherwise agreed by the Parties in writing, the period shall commence to run only thirty (3) days prior to giving such notice.

#### **6.23 Severability.**

Except as otherwise provided herein, if any provision(s) of this Agreement is (are) held invalid, the remainder of this Agreement shall not be affected except as necessarily required by the determination of invalidity, and shall remain in full force and effect unless amended or modified by mutual consent of the Parties.

#### **6.24 Captions**

The captions of the various sections in this Agreement are for convenience and organization only, and are not intended to be any part of the body of this Agreement, nor are they intended to be referred to in construing the provisions of this Agreement.

WITNESS THE EXECUTION HEREOF the day and year hereinabove written.

**CITY:**

**CITY OF SAN JOSE,  
a municipal corporation**

Approved as to Form

\_\_\_\_\_  
LES WHITE  
City Manager

\_\_\_\_\_  
VERA M. I. TODOROV  
Senior Deputy City Attorney

**PROPERTY OWNERS: [update - Owners need to provide signature authorizations and complete]**

**ARCADIA DEVELOPMENT CO, a California corporation**

\_\_\_\_\_  
By:  
Its:

\_\_\_\_\_  
By:  
Its:

**ELI REINHARD, an individual**

**PEPPER-LANE-QUIMBY LLC, a California limited liability company**

\_\_\_\_\_  
By:  
Its:

\_\_\_\_\_  
By:  
Its:

**DUINO FAMILY PARTNERS LP, a California limited partnership**

\_\_\_\_\_  
By:  
Its:

\_\_\_\_\_  
By:  
Its:

**MISSION WEST PROPERTIES LP, a California limited partnership**

\_\_\_\_\_  
By:  
Its:

\_\_\_\_\_  
By:  
Its:

**IONE ENTERPRISES 2 LLC,  
a California limited liability company**

\_\_\_\_\_  
By:  
DRAFT  
T-3198.005\387490

\_\_\_\_\_  
By:

Its:

Its:

**PACIFIC RIM SCIENCE PARK LLC,  
a California limited liability company**

---

By:

Its:

---

By:

Its:

**YERBA BUENA OPCO LLC,  
a California limited liability company**

---

By:

Its:

---

By:

Its:

**SAN JOSE/EVERGREEN COMMUNITY COLLEGE DISTRICT,  
a political subdivision of the State of California**

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By:

Its:

---

By:

Its:

**KB – SUMMERHILL EVERGREEN, LLC,  
a California limited liability company**

---

By:

Its:

---

By:

Its:

\*All Property Owner signatures must be notarized and proof of authority to execute on behalf of each property owner entity is required.

Attachments:

- Exhibit "A" - Evergreen Development Policy Area and Opportunity Sites
- Exhibit "B" - List of Property Owners with Assessor Parcel Numbers
- Exhibit "C" – Payment Phasing Schedule
- Exhibit "D" - Amenities List



*DRAFT*

**FUNDING AGREEMENT FOR CERTAIN IMPROVEMENTS AND  
AMENITIES IN THE EVERGREEN DEVELOPMENT POLICY AREA**

**EXHIBIT “A”**

**MAP TO BE INSERTED**

# FUNDING AGREEMENT FOR CERTAIN IMPROVEMENTS AND AMENITIES IN THE EVERGREEN DEVELOPMENT POLICY AREA

## EXHIBIT “B”

<u>Site (by Common Name)</u>	<u>Assessor Parcel Number (APN)</u>	<u>Number of Proposed Residential Units By Site</u>	<u>Property Owner by APN</u>
Campus Industrial Site (Berg)	659-02-010 660-33-001 660-33-002 660-33-006 660-33-013 660-33-011 660-33-025 660-33-026 660-33-014 660-33-012 660-33-020	660	Mission West Properties LP lone Enterprises 2 LLC lone Enterprises 2 LLC lone Enterprises 2 LLC lone Enterprises 2 LLC lone Enterprises 2 LLC lone Enterprises 2 LLC lone Enterprises 2 LLC lone Enterprises 2 LLC lone Enterprises 2 LLC lone Enterprises 2 LLC
Campus Industrial Site (IDS)	660-33-027 660-33-028	130	Pacific Rim Science Park LLC Pacific Rim Science Park LLC
Campus Industrial Site (Legacy)	660-19-005 660-19-011 660-19-012 660-19-020 660-19-021	400	Yerba Buena OPCO LLC Yerba Buena OPCO LLC Yerba Buena OPCO LLC Yerba Buena OPCO LLC Yerba Buena OPCO LLC
Evergreen Valley College Site	660-21-022 660-21-023	500	San Jose/Evergreen Community College District San Jose/Evergreen Community College District
Arcadia Site	670-20-071 670-24-013 670-24-045 670-25-027 670-29-002 670-29-017 670-29-020	1875	Eli Reinhardt Pepper-Lane-Quimby LLC Arcadia Development Company, Arcadia Development Company, Arcadia Development Company, Arcadia Development Company, Arcadia Development Company,
Pleasant Hills Golf Course Site	649-23-001 649-24-013	665	Duino Family Partners LP Duino Family Partners LP

# FUNDING AGREEMENT FOR CERTAIN IMPROVEMENTS AND AMENITIES IN THE EVERGREEN DEVELOPMENT POLICY AREA

## EXHIBIT “C”

PHASE	PLANNING PERMIT ISSUANCE	TRANSPORTATION/AMENITY	PAYMENT OBLIGATION (est. in 2006 \$)
1	Within 6 months of 1 <sup>st</sup> Zoning Approval any of the Four Opportunity Sites	Partial funding payment for Highway 101 investments, including but not limited to planning, property acquisition, and design work.	\$22M and Completion of the US 101 Funding & Construction Agreement
2	Within 6 months of the 1 <sup>st</sup> PD permit or tentative map permit approval	Funding for Base Transportation Investments	\$30M
3	Within 6 months of PD permits or tentative map approval for over 601 units	Funding for the construction of all remaining Transportation Investments & amenities (as funding permits)	\$32M
4	Within 6 months of PD permits or tentative map approval for over 1430 units	Funding the construction of community amenities	\$35M
5	Within 6 months of PD permits or tentative map approval for over 1790 units	Funding the construction of community amenities	\$48.3M
<b>POOL UNITS</b> - Pool units approvals shall not be issued prior to the start of construction of the required Highway 101 improvements. Any property owners seeking residential entitlements ahead of Highway 101 construction can voluntarily contribute “X” dollars in addition to the required Evergreen Traffic Impact Fee.			

Table Note: Estimates shown in this table are based on 2006-dollar amounts and will be adjusted annually based upon inflation of construction costs. The estimated cost value of the base improvements are based on limited project descriptions and will need to be refined following completion of design work for those improvements.

**FUNDING AGREEMENT FOR CERTAIN IMPROVEMENTS AND  
AMENITIES IN THE EVERGREEN DEVELOPMENT POLICY AREA**

**EXHIBIT “D”**

**Amenities List**

**Tier 1:**

1. Youth Sports Fields – Little League (Campus Industrial)
2. Community Center on Arcadia
3. Thompson Creek Trail
4. Fowler Creek Phase II & III
5. Mount Pleasant Multi-use, Community Center, Sports Fields

**Tier 2:**

6. Trails, Bike Lanes, and Minor Traffic Calming
  - i. Upper Silver Creek Trail
  - ii. Fowler Creek Trail
  - iii. Bike lanes for appropriate corridors
  - iv. Minor Traffic Calming
7. Sports Fields and New Neighborhood Park (Campus Industrial)
8. Sports Fields (Arcadia airport approach zone)
9. Sports Fields at August Boeger Jr. High/Fernish Park
10. Aquatic Center

**Tier 3:**

11. Ocala Softball Fields
12. Intelligent Transportation System ITS
13. Lake Cunningham Improvements
14. Sports Fields (PHGC)
15. New traffic signals and other transportation investments

**Tier 4:**

16. Street trees
17. Nieman overcrossing
18. Lake Cunningham Overcrossing
19. Median Island Landscaping
20. Neighborhood Park Improvements (Meadowfair Park)